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H – 2717

International Court of Justice

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Mr. Gilkyson

Dr. Servatius

Mr.President, may it please the Tribunal, the Prosecution has proposed to declare the "Corps of the Political Leaders" as criminal. Of what is this collective group of persons being accused?

Topics of investigation were the persecution of the Jews, the struggle against the church as well as the dissolution of the trade unions; the incitement for the lynching of flyers who had made emergency landings, the mistreating of foreigners; the arrest of political opponents and methods of their supervision and being spied upon.

The main point in law of the accusation raised by the Prosecutio has to be determined. The accusation is to this effect that the "Corp of Political Leaders" have collectively committed the deeds mentioned for the unleashing of a war of aggression or that they had banded together in order to commit the crimes of war which have been mentioned.

It is to be established from the beginning that all those deeds which do not concern themselves with these motives or which as individual deeds do not belong to the common plan of the conspiracy are not included in this accusation.

The major crimes such as the extermination of the Jews and the killing of political opponents in Concentration Camps are not crimes against humanity in the sense of the Charter and the minor measures of spying for election frauds are insignificant in themselves in this proceeding

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provided they were not carried out with the aim of being crimes against international law, crimes against peace and war crimes as set down in Article 6 of the Charter.

Reference has already been made to this situation in law without its meeting any contradiction. In order to support this opinion, I should like to refer to the Supplementary Berlin Agreement (Berliner Zusatz-Protokoll) made to the Charter on the 6th of November in 1945. Here we are concerned with an agreement of the four signatory powers to the Charter, the sole point of the agreement being the changing of semicolon into a comma. Throug this agreement we have the correction of the text of Article 6c which had been separated into two parts by the semicolon in the English and French texts; the result had been that crimes against humanity could have been prosecuted without being related to crimes against peace or war crimes which are under the Tribunal's jurisdiction.

This possibility of interfering with the internal matters of a State without a connection to war does not now apply after Article 6c has been drawn up in accordance with the Russian text.

Any interference for humanitarian reasons alone is therefore denied the Tribunal.

In all of their basic statements the Prosecution have continually tried to establish the connection of crimes against peace with war crimes by proving a conspiracy in connection with all of their allegations.

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Who is included in the charges directed against the "Corps of Political Leaders"?

According to the Charter it is for the Prosecution to determine that circle of individuals who is to be declared criminal as an organization or as a group. Here the charge is made against the "Corps of Political Leaders" according to National-Socialist terminology.

Despite the designation which refers to an organization, such an organization did not exist. It was prohibited through a directive from the deputy of the Fuehrer in the Party, Hess, of the 27th of July, 1935, Document Number PL 12, which expressly prohibited the designation chosen "Political Organization" for the same circle of individuals. The reason given therefore was that there could not exist within the Party any special organization.

Actually, this circle of individuals were functionaries only as they exist within every party as leading and executive organs.

But there is no doubt that there are a great number of people who because of their titles have to be defined as political leaders.

It is not a group which united for one could not enter the circle of political leaders of one's own accord, but only through an act of sovereignty, through a nomination which took place without any efforts on the part of the nominee. The situation in law is comparable to that of every official who through his appointment enters the circle of his colleagues.

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How is it that this circle is being narrowed down as a special group?

Beyond the appointment only through the right to wear a unifor which was connected with it; in addition we have the oath, but this was not anything special, for all officials and soldiers had to tak it in the same way.

The tasks and activities of the members of the Corps of Polit-ical Leaders however are completely varied according to their kind and significance. There were political leaders who were active in enterprises like the German Labor Front, and the National Socialist People Welfare Association, and in the practical administrative wor wore the uniforms for decorative reasons. These are the members of the various affiliated associations who deliberately are not included in the charges of the Prosecution.

However there are political leaders who piloted the actual political apparatus.. These were the Hoheitstraeger, the function-aries, and the members of the Political Staffs who are characterize as top leaders or main leaders by the prosecution (see trial brief pages 1 and 73).

From the reasons given by the Prosecution for their charge, we see that under the Corps of Political Leaders they mean only these individuals. They are enumerated from the Reichsleiter to the Blockleiter.

From the affiliated organizations, only those Political Leader are included insofar as they were

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active in the political staffs which grouped themselves around the Hoheitstraeger, the functionaries.

This circle of persons can be grouped together as a special defineable group, in that we have a connection through the relationship of subordination, discipline and business matters.

The number of people thus involved has been set up by the Prosecution to be about 600,000 according to the number of Aemter (offices) existing in the year 1939. As the document used as a bas shows Document 2958-PS, the Aemter in the staffs are not included. The figures show in addition to the Hoheitstraeger, the functionaries, including the Zellen- und Blockleitern, there were still abou 475,000 of these offices which were filled by political leaders. In this way, the number of political leaders in the political staffs for the year 1939 is increased to perhaps 1,000,000.

As can be determined from the party statistics, because of tl heavy turnover of personnel in 12 years, the figure will be increased by 1½, that is to about 2½ million. In this connection, the fact is taken into account that the number of offices was only half that number.

If you deduct the membership of the Ortsgruppenstaebe, a figur of about 1½ million remains.

Not included in these figures are office holders

from the staffs who were not appointed Political Leaders, and thos who during the war, were charged on an honorary basis with the activity of political leaders in subordinate positions; above all, they are the Zellen- und Blockleiter during the war. According to testimony given by witnesses their number may be estimated to be 600,000. If like the Prosecution, you include these individuals in the cirle of political leaders, then the entire figure of the individuals involved rises to 2.1 Million. This figure rises still more because there were other office holders in the political staf who were not appointed political leaders.

Through the fact that the charges raised by the Prosecution is restricted to political leaders, a part of the people in the political staffs are not included. They were those who were not appointed political leaders even though they held office.

An extension of the charges to apply to these persons cannot take place subsequently without detriment to those so involved, since the possibility of an application for a legal hearing was not given them in the first publication, by the Tribunal.

Before the question can be dealt with as to whether the group so defined is to be declared criminal, the admissibility und International Law, of the charges, has to be discussed.

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According to Article 50 of the Hague Rules on Land Warfare, a collective punishment of the population is admissible only when the population is considered jointly co-guilty for individual deeds. This is an exceptional regulation, which serves solely for the protection of the occupying power.

In that way a similar measure is prohibited for general political reasons. You cannot punish a group just because the guilt for a war is imputed to its members, or if you hold them responsible for moral resistance. You cannot arrest all "political commissars" or "Jews" and sentence them because of their political attitude. This prohibition of the Hague Rules on Land Warfare is based on the penal individual principle of democracy which has not lost its prestige.

Whether the charges of the prosecution are legal, or whether the Charter has made Article 50 of the Hague Rules of Land Warfare invalid -- that has to be examined officially.

If you consider the proceedings admissible then we have to examine whether the participation in guilt of the group can be considered proved. How such a proof is to be produced neither the Hague Rules on Land Warfare nor the Charter indicate.

We can follow two principles: Either that of justice, of that of expediency.

The principle of justice demands proof of individual guilt, and the sentencing of a

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group is to be rejected, "even if there is only one just man among them." The principle of expediency admits majorization of the innocent ones, and therefore one refers rather to punish the guiltless than to let the guilty ones unprosecuted.

The prosecution repeatedly has stated that the aim of the indictment were only to punish the guilty ones and not to set a trap for the guiltless ones or to catch them too in one net.

These words are in accord with the principle of justice; but the request itself to characterize the group as criminal, rests on speculations of expediency. This apparent contradiction can be solved only by requesting the verdict of the court as a means of procedure to answer an emergency.

In the preliminary prodeedings, it is true, a part of the innocent people were incorporated, however, in the subsequent proceedings they should have all the "rights to make objections", as Justice Jackson has stated.

By its order of March 13, 1946, the Tribunal , at the occasion of stipulating the procedure for the taking of evidence, has expressed itself in a sense which might make possible a majorization; a fixation for the decision itself, of the final influence in regard to the later individual proceedings, however, has not taken place. The decision of the Tribunal in this regard ha to depend essentially on the results which its verdict will have.

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Therefore, the Law Number 10 of th. Control Counsel of December 10, 1945, is of the utmost importance. It appears from the text of the law that the real membership in an organization or a group which has been declared criminal, will necessitate punishment. If that were the case the inclusion of the guiltless ones in the present proceedings would constitute a severe break with the guilt principle which forms the basis of modern penal law.

Such an interpretation would not be compatible with the text of the Charter. Though its article 10 declares the objection that an organization was not criminal as inadmissible, but it admits to anyone the objection that he was not acquainted with the familiar character.

It follows also from Article 11 of the Charter that a sentence is contemplated only in the case of "participation in the criminal activity".

The informed press and the radio have expressed themselves in the same vein.

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The question arises what factors make for the criminal character of the group which are decisive for its judgment. The position of the Tribunal can be learned from its ruling of March 13, 1946. The essential factor is the participation in the conspiracy. This presupposes the formation of the group for the commitment of an act which has been declared criminal by Article 6 of the Charter. Such a formation, however, in the case of every conspiracy, is based on the concrete knowledge of the contemplated crime.

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The Prosecution suggests this knowledge with the assertion of the obviousness or the comprehensive information available to the political leaders.

Obvious were the prosecution of the Jews and of the churches merely as general tendencies. Not known were the criminal excesses emerging from them.

The following is important in this connection. The thing that matters is not the obviousness of facts but the obviousness of the motives. As far as we are not concerned with genuine war-crimes, the motive of the aggressive war must be known; the acts must be recognizable as the first stage of unaggressive war Only by that the participation in a criminal conspiracy can be carried out.

The prosecution concludes that those motives were self-evident for the people concerned on the basis of the doctrine of National-Socialism; there, it is claimed the aims were given which by necessity led to aggressive warfare. Therefore, the building up of the Party and the soliciting of members as well as the seizure of power becomes criminal based on the motive of the aggressive war. It is claimed that an organization existed for the purpose of waging an aggressive war or for the commitment of war crimes.

Is such a conclusion correct?

As a manual, the political leaders had

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the Party Program and the book "Mein Kampf".

The Program of the Party had been attacked vigorously by domestic opponents, but it had not been objected against by any foreign sources. In 1925 the High Inter-Allied Rhineland Commission in Coblentz had approved of it for the Rhineland and later the League of Nations had done likewise for Dantzig. The Party was permitted including its philosphy as expressed in the book "Mein Kampf". Besdies it was generally known that Hitler had declared that his book was out of date in many points.

It is true that the goals aimed at by the part y could lead to a war, and it is also true that a war which aims something which infringes on the property of someone else, must include the attack on such property.

But the slogans "Lebensraum" (Living Space) and "Los von Versailles" (Off with Versailles) were not bound to lead to aggressive war, just as little as the slogan "Workers of all countries unit" must lead to aggressive war. There is the method of negtiations by appeals to reason. Just as in the interior of a state strike, uprisings, and revolutions may be justified for workers in their struggle for existence, so in the life of nations it may happen that war will ensue. But the normal way is that of negotiations. If it weren't so every member of an opposition party could be prosecuted for high treason.

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Whether actually an aggressive war has been conducted, which was obviously transgressing the technical concept of opening the hostilities has been doubted in the earlier part of the proceedings by many of the main defendant and with many important reasons.

If Hitler demanded living space, the outcome of the war shows that other states took it without condemning the principle which supposedly as a "law of life" is the basis of the aggressive war. The archives of the world remai closed.

For the defense it matters less to determine whether we had it to do with an aggressive war, but rather whether the political leaders know of it and whether this was obvious to them.

It is just the facts which speak vividly against the obviousness of aggress intentions. For every political leader Hitler's offer to disarm down to the last machine-gun must have been impressive, and also this repeated declarati that the misfortune of other peoples could not bring good fortune to the own people, but rather that the welfare of all should be the basis of internatio life. Impressive must have been the naval agreement with Great Britain, the declarations given France of not having the intention to raise further terri torial claims, the Munich Pact, and finally the Treaty of Friendship with t Soviet Union. Particularly the latter caused a wave of rejoicing because it seemed to be about peace with that adversary which had been therefore called the worst enemy. Just that treaty at the same time proved

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how impossible it is to derive from the book "Mein Kampf" any directives for the practice.

To judge the <u>rearmament</u> of Germany as far as the political leaders are concerned, the outstanding factor is Hitler's repeated declaration that the "Buendnisfaehigkeit" (ability to conclude agreements) could be establ only by the equality of armaments. The extent of the rearmament was not recognizable in relation to the strength of the adversary and Hitler himself had declared it to be folly that a small state should challenge all the world.

The cornerstone of all political leaders' conviction that no war was planned, however, was the fact stressed again and again that Hitler himself had been a soldier on the battlefront of the First World War. Therefore, it was not to be expected that he should bring about the suffering of a new war.

Thus at a Party rally in 1936 in Nuernberg at the occasion of an appeal directed exclusively to the political leaders he literally stated:

> "During these long years we had no other prayer than:
> 'Lord, give to our people domestic peace and give it and maintain external peace! In our generation we had so much of fi that it is understandable when we long for peace ..... We desire to plan the future of the children of our people, we wish to work for the future, to

safeguard not only their future lives, but to make them easier, too. Behind us is so difficult a fate that we have only one request that we can address to the merciful and benevolent providence: spare from our children what we had to suffer! We desire nothing but peace and tranquillity for our work."

These words were directed to the very same men who now as political leader are hit by the indictment.

The thought of war was opposed by strong fundaments for a positive policy of peace. For all those who fought for Socialism and who believed in the realization of peace plans, the fact that Hitler himself had been a worker was standing in the foreground. The elimination of unemployment appeared as the greatest accomplishment of peace; a success which was convincing for everyone who regained employment. It was not Hitler's demonic magic which brought seven millions of unemployed and the same number of partially employed people.with their families to his ranks, but the fact that he gave them again work and bread, that was the thing that conquered the masses.

It cannot be denied that the position of the worker was improved beyond the mere existence and that his social standing was raised. When war broke universal old-age insurance system, a big social undertaking was in the process of being built up. To the political leaders that did not look like aggressive war.

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There is yet another important ground which contradicts the obviousness of the occurences and their motives; it is the system of secrecy.

From the taking of evidence the Tribunal is acquainted with the means of secrecy.

It would like to stress another point of view which aided in a peculiar manner that system of secrecy; it is the confidence which Hitler enjoyed.

This confidence was nourished from the huge resources of social success which he had accumulated by the elimination of that unemployment which had brought the people to the brink of ruin. One has to add to that the success in the field of foreign policy which had been recognized by foreign powers, too.

Both were supported by the traditional authority of the state and by emphasizing that tradition. These are both factors which have much influence on the people.

One has to add an up to then unknown frankness of language in matters of foreign policy which the French prosecutor has called "naivité". This frankness established domestically the conviction that Hitler would not instigate anything secretly. That picture was rounded out for the millions of followers by that facade of respectability and dignity which was kept up by that circle around Hitler from which one could have expected first criticism and warning

From all that one has to conclude that the political leaders could not gain knowledge of the aggressive intentions.

Equally the assumption by the prosecution that special information about the plans had been given seems to be untenable on the basis of the evidence submitted during this trial. That assumption of the prosecution presumably rests on the original theory that it was a part of the normal business routine to inform all Hoheitstraegers while it has been established by now that only a very small circle was initiated.

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The situation is different in regard to the war-crimes. Here the thing that matters is not the proof of the motives of known happenings, but the knowledge of the facts themselves.

It is certain that the war-crimes due to their abominable motives were kept secret as a matter of course.

The Tribunal has learned in the course of the taking of evidence of the circle of silence which was drawn around the most horrible atrocities. Other war-crimes which have been made part of the indictment are individual cases which were not publicly known. In connection with the individual points we shall dwell on these accusations.

The prosecution has submitted a number of happenings which on the basis of the Charter cannot be considered crimes.

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Dr. Servatius

Evidence has been given concerning the building up of the Party, the seiz of power, and the maintenance of power. These are facts that have not bee denied, as a general rule. The creation of a dictatorial state and the pr hibition of other Parties is a measure of home policy which every State m take according to its judgment.

To prove that these methods were created for a war of aggression and that they are therefore criminal is an unnatural construction of facts. Any pr for such an assumption is lacking.

A dictatorial construction of the State may be necessary for the building of Socialism as well as for a war of aggression. Thus, the orientation of economy can serve good as well as evil.

The British prosecutor has shown us another point of view. He has stated that intervention against their own government is possible in order to protect Nationals. This conclusion he draws from the fact that even war should be waged out of humanitarian reasons.

The statutes do not permit such an intervention, as has already been state in the beginning. Even International Law does not recognize a right of int vention upon moral grounds. Crusades are not permissible. If the so-called methods of the Party are here being commented upon it is because the mis-uses are being connected with the crimes of the statutes.

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Four documents have been submitted referring to Political Leaders and concerning the pressure exerted upon the voters.

The most important one is Document D-43 of the year 1936. It concerns an inquiry of the Minister of the Interior of the Reich as to which officials did not fulfill their obligations to vote. The Ortsgruppenleiters are asked to comment upon this. This is a letter of the Kreisleitung in Bremen. Another Kreisleiter, the witness Kuehl, declared before the Commission (Record, page 1907) that he did not receive such and inquiry. The general character of this inquiry is thus put in doubt.

One document, R-142, dating from the year 1938, is but of local importance. It originates from the SD, Sector Koblenz, and mentions the statement of the District Manager (Kreisgeschaeftsfuehrer) about the reasons of the bad election results due to quarrels of a personal nature. Both documents deal with the results of the election after the vote.

Two further documents - D - 897 and D-902 - of the year 1938 are letters exchanged between the lowest offices of the SD in Erfurt and concern election control. The closest cooperation with the Ortsgruppenleiter is advised.

As far as the proceedings against the Political Leaders are concerned it is shown that the commanding agency of the Party in no way enters into action.

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Those are merely individual measures of other agencies. No general practic or knowledge can be deduced from that.

Spying is another count of the indictment.

This count originated in a page of the Organizations Book, page 101 of the 1940 edition, in which it is said that the Blockleiters should report any spreading dangerous rumors. In this connection the household card indexes were established which, in the Gau Cologne, contain extensive measures of surveillance.

The question is now as to whether this was generally done by the Political Leaders in this manner or whether it was done in conformity with the instructions of the Party agencies.

The instructions of the Party to the Political Leaders are to the contrary. See Decree No. 127 of the 5th of October 1936 in the orders of the Fuehrer's Deputy (Document No. P.L.34).

The witnesses examined in connection with this question have testified that these instructions were followed and that the indexes they know of were not of a spying nature. It is hereby proved that the system of the Gau Cologne was not generally followed and that it was not valid for all Gaus.

In this connection we must particularly point out the testimony of the witness Dr. Kuehn who, as the counsellor of the Superior Provincial Court (Oberlandesgerichtsrat) was competent for the

(Zeintauchegesetz) in the Ministry of Justice.

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The witness declared in the interrogation of 10-7-1946 that proceedings w generally taken up upon the denunciation of inimical neighbors or others, and only very rarely upon the instigation of Political Leaders. The only concrete testimony of spying submitted by the prosecution is Document D-901, in which a Blockleiter and janitor of the Assembly Hall reports a secret meeting of the members of the Confessional Church in his building. The causation of protective custody and confinement to concentration camp is coupled with the count of spying.

That political adversaries of a State should be declared enemies of the State and taken into custody seems to be a custom adopted by politicians. It is based upon reciprocity and represents retaliation to the losses in the political struggle.

A connection with war of aggression is not established. The count of indictment of the prosecution will, therefore, be directed rather against mis-uses incurred through excesses and atrocities.

Not the Party was competent in this field, but the State agencies. According to the orders of the chief of the Security Police and of the SD of 10-3-40, Document P.L. No. 100, arrests were made solely by the Gestapo. Any intervention on the part of Political Leaders was strictly forbidden (P.L.No.29). In this manner secrecy was assured from the beginning.

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The real conditions in the concentration camps were conces from the political leaders through the fact that even after the release the political prisoners and their families had to remai under surveillance, and that this order was carried out. This i document PL No. 100, which created such astonishment in court today. The witness, Graf von Roedern testified b-fore the Comm concerning the knowledge of the conditions in the concentratio camps. He said that in the beginning of 1943 the Landesgruppen ter of the Ausland organization (nazi organization abroad) had visited the concentration camp at Sachsenhausen, and had gaine the impression on that occasion that the rumors about the conc tration camps circulating abroad at that time were without foun ation. (Commission record page 1897)

The witness, Sieckmeier states in affidavit PL No. 57 that in the Spring of 1939 he visited the concentration camp Buchen with 150 American guests, and the witness Wuensche states in affidavit PL No. 573 that in June of 1938 he visited the conce tration camp Sachsenhausen with a class of the Berlin Zollschu (School for customs officials). Both state that the quarters a the food of the prisoners were in conformity with the regulati Thirty-five further statements of political leaders who had visited such camps are contained in the collective affidavits. They are all of the same effect.

14,763 statements summarized in affidavit PL No.57 show t these political leaders knew nothing of the conditions in the concentration camps, and that upon inquiry they received no an in seven cases,

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and satisfactory answer in one-hundred and two cases.

Then documents concerning mercy killing were presented in evidence by the prosecution.

It is shown that the political leaders had no part in the carrying out of these measures, and that they had no general knowledge of them.

Document 630-PS, a letter of Hitler's of the 1 September 19 proves that it is a socalled special secret order, which was given directly to the Reichsleiter without portfolio Bouhler, and Dr. Brandt. Neither the Reichsleiters nor the Gauleiters were told such special secret orders (Document 59A, affidavit Hederich).

Only the Reichsminister of the Interior was competent for carrying out of those measures.

According to Document D-906, Nos.3 and 6, the medical commi concerned seems to have taken up contact with the Gauleiter or Kreisleiter in individual cases. It is noteworthy, however, that just in the last document it is noted that the Hoheitstraegers (Bearers of Sovereignty) are not involved since the regulations not contemplate this.

Confirmation of these facts is given by the collective affi avits PL-59 of Karl Richard Adam, who states that 7,642 politica leaders

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executed affidavits to the effect that they had received no orders and had not been involved in the carrying out of such measures.

Great precautions had been taken to keep these facts a secret but nevertheless some knowledge was gained of them, and rumors were circulated. This is borne out by special notes recommending secrecy in the incriminating documents. The witness Meyer-Wendeborn stated before the Tribunal that upon his inquiry he was told that these were but rumors. Two medical men, Dr.Engel (PL-59B), and Kreisleit Dr.Dietrich (PL-59C) confirmed the official denial of the mercy killing.

Were these measures in any way connected with the conduct of the war?

It is certain that in 1934, already, Euthanasia was being discussed as borne out in document D-152.

Carefully worded articles were published in the press, which encouraged this idea from the viewpoint of "Natural selection" (Zuchtwahl) and which pointed out the custom in ancient Greece of exposing and abandoning the unfit.

A connection with belligerent intention is difficult to establish even though a member of a Gaustab defines mercy killing in case of war as war measure in Document D-906.

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Dr. Servatius

I now come to the events which appeared openly: Smashing of the unions, persecution of the churches and persecution of the Jews.

The "Smashing" of the free trade unions was well known. It was a revolutionary act. It was admissible or inadmissible, like any revolution. It was an event which happened only once - for which the responsibility is clear. The Political Leaders did not have a direct part in its execution, but they knew the event and approved it.

It is to be examined whether it was a measure anticipating war, or what other reasons were decisive.

The 150 large and small unions, which included 30% of the workers, were already at the end of their strength before they were dissolved.

Economically,

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the majority of them were facing collapse; the many years of unemploym had depleted their treasuryes, but increased the demands upon them. The political parties which dominated unions had been helpless in the face o the economic crisis; they had been powerless against Hitler, and so resi ned. Mass withdrawals which took place at the end of 1932 and at the be- ginning of 1933 had thus made the unions merely shadows. On the other h the workers transferred to the NSBO, and thereby aligned themselves with the idea of labor peace and of community which was recognizably preparin the way for the solution of the economic crisis. In a similar way the employers' organizations were compelled to maintain labor-peace, and were dissolved.

The purpose of the elimination of all organizations was to reach a settlement between labor and capital; the class struggle was replaced by the duty to care for the workers on the one side, and the duty of loyalty on the other side, as keys to the elimination of the economic distress.

That the proceeding was so understood and approved by the workers is shown by the circumstance of frictionless cooperation; thus the economic political proceeding was justified after the event.

Then there is the charge of the <u>church question.</u>

That the churches were at variance with National Socialism is well know That the causes of this quarrel were that the churches were opposed

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to an intended war of aggression is unknown.

After power-political differences at the beginning it was later reasons of Christian morals which increasingly called the Church to fight again National Socialism. Generally, the churches were indifferent to the foreign policy of States according to the principle, "To the State that what belongs to the State."

Conflict with the Church was contrary to the Party program, and Hitler himself never preached it. He would probably have preferred to win over the churches. He tried to do so through the Concordat and had successes through the proclamations of the Fulda Conference of Bishops and the proclamation of the Austrian Bishops after the Anschluss.

The propaganda against the Church was limited and was directed against the members of the clergy who interfered in politics. There was no real organized fight against the Church. The separation of Church and State was demanded in order to overcome the splitting of the people by the various Confessions.

Thus, Hitler in 1933, immediately after the seizure of power told the witness Count Wolf-Metternich that it was inexcusable if the Christian was combatted (Affidavit P.L. No.62 c), and the witness Theology Profes Frabricius confirms this attitude. (Affidavit P.L. No.62 a).

For the Political Leaders this conviction manifested itself in the fact that even before 1933 some

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theology students, theology professors, and churchmen had joined the Party. After 1933 there was a strong movement for rejoining the Church among those who had left the Church under the influence of Marxism; there were many retroactive marriage and Christening ceremonies (see Affidavit P.L. 62 a and 62 b - Prof. Fabricius and Theologian Buth).

The witness Schoen confirms an affidavit, P.L.No.62, that of 500 Political Leaders whose statements he examined, 42% simultaneously held Church offices. The witnesses Wegscheider and Kaufmann, who were examined before the Tribun also testified that numerous Political Leaders held a Church office. The Bishops Dr. Groeber and Dr. Berning were appointed to the State Council (Staatsrat) (Affidavit Count Wolf-Metternich, P.L. 62 a).

The actual picture is shown from the comprehensive affidavit of the witness Schoen (P.L. 62) who, in the examination of 21, 131 affidavits, noted that in the individual Ortsgruppen church life remained undisturbed and that the Party participated in Church life occasionally officially, and, in some cas in uniform. Thus, in the individual Ortsgruppen there was a good relationsh with the clergy, and this was expressed publicly at celebrations.

On the other hand there was a battle lead by a small anti-church group whos activities and statements are in contradiction to the general Party line. The leader of the group was Bormann.

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Of 23 documents which were submitted by the prosecution against the Politic Leaders on the church question, no less than 9 documents are statements of opinion by Bormann. Seven documents concern the SS as well as the SD and th Gestapo. Four documents deal with three local occurrences, and one documen consists of the personal opinion of Gauleiter Florian. There follows a quotation from the "Mythos", and a document with directives for the PAD.

All these documents do not show that the Political Leaders on the whole participated in the elimination of the Church.

I comment on the individual documents:

The document containing the most serious charge is the secret decree of Bormann to the Gauleiters on "National Socialism and Christianity" (Document D-75). On this subject there is an affidavit by the witness HEDRICH (R.L. 62 c), according to which Bormann issued this decree independently o Hitler instructed him to recall and destroy this circular. The witness Gauleiter Kauffmann confirmed before the Tribunal that this decree was recalle The same thing is shown by the testimony of the witness Hoffmann before the Commission on 3 July 1946 (page 2393/4). In Affidavit R.L. 62 b the witness Buth states that the defendant Rosenberg likewise rejected the decree and prepared an objection. A Document-98-PS (sic) is a letter of Bormann to Rosenberg and cals with a so-called National Socialist Catechism. It is a personal

opinion of Bormann. There is no answer of Rosenberg at hand.

In the letter a meeting of the Reichsleiters is suggested. The affidavit of t witness Hederich (P.L. 62 c) states that such a meeting never took place.

There follow a number of documents which show Bormann's constant personal urging towards the separation of Church and State. Document 070-PS regarding school devotions lies in this direction; as also Document 840-PS, admission theologians into the Party; and 107-PS, directives for the participation of RAD in church ceremonies.

The following documents, 100-PS and 101-PS, are letters of Bormann to Rosenbe expressing the wish for their own literature for soldiers; Rosenberg is here attacked because of the attitude which he took in favor of a book in a religious vein by Reichsbishop Mueller. This proves Bormann's purely personal activity.

In the same field lies Document 064-PS - a letter of Bormann to Rosenberg. It demands comment on an enclosed letter of Gauleiter Florian of 23 September 19 who had objected to a religious writing by General Rabenau. It is a personal opinion which is not typical of the general attitude of the Political Leaders

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A further action of Bormann is shown by Document 116-PS, a letter to Rosenber of 24 Jan. 1939 on the curtailment of the theological faculties. Here Rosenbe is not instructed to execute curtailment as the prosecution erroneously ass another letter is merely sent to him for his information, in which a curtailment of the faculties was welcomed.

The continuation of Rosenberg's efforts of spreading his opinion is shown by a letter of Bormann of 17 May 1939 to Rosenberg (Document 112-PS). Here Bormann sends a plan of the Reichs Education Minister on the limitation of the theological faculties. Likewise, only with a request for his opinion, and no as the prosecution assumes, for the immediate execution of the measure under consideration.

Then the Political Leaders are charged with the activities of the Gestapo on the basis of the files of a conference of church specialists of the Gesta (Document 1815-PS). This cannot be taken as a proof of the anti-church attitude of the Political Leade

Nor did the Political Leaders have any direct connection with the confiscati of church property.

The submitted Document R-101 (correspondence of the RSHA) shows confiscatio by the Reich Governor (Reichsstatthalter) and Gauleiter and by the Eastern German Agriculture Company (Ostdeutsche Landwirtschaftsgesellschaft GmbH) in the Warthegau. Both acted in their capacity of State agencies, so that this not a general measure with use of the

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Party machinery and knowledge of all Political Leaders.

Document 072-PS, a letter of Bormann to Rosenberg of 19 April 1941, expressly emphasizes that it is not the affair of Political Leaders to confiscate Church property.

There follow the public actions against the Church brought out by the Prosecution. Documents 848-PS and 849-PS deal with excesses against Bishop Sproll in Rottenburg. It is shown that this action was carried out by forces foreign to the local Party.

Document 1507-PS deals with incidents on the occasion of a sermon by Cardinal Faulhaber in Freising. The records show that the Political Leaders were given definite instructions not to interfere with the religious service held there even if the Cardinal should deliver a sermon against National Socialism. Actually there was no interference with the service by Political Leaders. It is noteworthy that according to the records Cardinal Faulhaber declared himself willing to officiate a few months later in the same church, "through the mediation of Mayor Lederer of Freising who was at the same time Kreisleiter and Standortfuehrer of the SA."

This shows that the measures appear more extensive than they were in reality, and that the Political Leaders could not have any real picture.

Nor could the "Mythos" give them any explanation on the Church question. This book was hard to understand and never received the official Party stamp of unobjectionability. (See Affidavit P.L.62 c.) The witness Count Wolff-Metternich has stated that Hitler expressively called the book a private work of Rosenberg, which did not please him (P.L. 62 c.)

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The persecution of the Jews was the most obvious event. It can be explained quite apart from war of aggression. The events are known:
Economic driving back of the Jews, defamation by the Jewish Star, and elimination from social life, the issuance of the Nurnberg Laws, evacuati toward the East, and, finally, extermination. Here we can only investigate the extent of the accurate participation of the Political Leaders and their knowledge of the type and scope of the measures.
The legal measures were taken without consulting the Political Leaders. Insofar as they tended to restrict the influence of the Jews they were welcomed by them and corresponded with the Party program.
Nor was there objection to the Nurnberg Laws, but the Jewish Star was considered disgraceful. There was opposition to the confiscation of property, and the evacuation.

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This story of the 9th of November, 1938, is known to the Tribunal through examinations of witnesses. It was a surprise maneuver prepared by Goebbels during the absence of the Gauleiters from their Gau. Because of possible opposition, the Party machinery was circumvented. As far as the political leaders had the possibility of taking any action, many Gauleiters refused to carry out the orders of issued counter-orders as soon as they learned about the foreshadowed action. The witness, Gauleiter Kaufmann, has confirmed this for Hamburg. The witness Gauleiter Wahl, hast testified the same before the Commission for the Gau Schwaben; and the attitude of the Gauleiter for Koblenz-Trier is contained in Affidavit P.L.54-F.

As far as the Kreis and Ortsgruppenleiter is concerned, a planned use of the political leader has also not been determined. All witnesses' testimony confirms here the surprise, opposition and discrepancy of their actions. (See Affidavit Dr. Volkmann, P.L.54 a.)

Hitler refused, Goering refused, and even Heydrich declared before the Gauleiters and Gaurichters on the 20th of November, 1938, that the severest measures would be taken against all concerned. (Cf.Affidavits PL-54-d and e) The report of the Supreme Party Judge Buch (Document 3063-PS-US-Exhibit 332) produced by the prosecution, according to which the punishment was a mere farce, was unknown. The leniency of the Tribunal had been explained by stating that the man in the street could not be condemned as long as the instigator Goebbels remained free (Cf.Affidavit Buch P.L. 54 c and Hederich P.L. 54 a).

The refusal to accept any forceful solution following these events led to believe in the sincerity

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of the resettlement plans, which in reality proved to be preliminaries of extermination.

When the decision for the extermination order was made is unknown. The affidavit signed by Witness Albert P.L. No.54 h says that Himmler pretended even in 1942 in a memorandum that he endeavored a legal and humane solution of the Jewish problem at a cost of 25 to 30 thousand million Marks.

The apparent reason for all these measures was not for the purpose of war, but exclusively for the solution of the racial question.

The real happenings in the East came down to us as remote rumors, and were not given credit because of their monstrousity, but were considered as enemy propaganda.

In this connection, the "explanation" issued by the Party Chancellery on October 9, 1942 (Document TL No.49) is significant. Here the political leaders were officially told that the atrocities were not true.

Document D-998 containing the periodical "Die Lage" of August 23, 1944, mentions the Jewish problem in Hungary. The actual events are not referred to. Because of its small circulation, and the fact that this article appeared only towards the end of the war, it is not bound to affect in any way the basic opinions of the public.

The bulk of the political leaders' ideas on the Jewish question irrespective of their rank and district, were clearly shown by affidavit TL 54, which contained a summary of 26,674 sworn declarations.

The next question to be examined is

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the indictment of the Political Leaders for war crimes.

At first appears the Jewish question again insofar as foreign Jews are concerned.

Knowledge of events taking place outside the Reich territory cannot be supposed of the majority of political leaders. The Press announced that governments of other countries, such as Hungary, France and Italy, took measures similar to that of the Germans. What happened in reality was unknown in Germany. Document PL-No. 49 Confidential Information issued by the Party Chancellory October 10, 1942, concerning Rumors Regarding the Situation of the Jewish in the East was destined to cover up and leney the facts.

Concerning the Germanization of Slavic territory, three documents have been presented to the Witness Kurt before the Tribunal.

Document U.S.S.R.-143 concerns the removal of Slovak street names and the use of the German language for officials. Thorough examination, however, shows that this was not a measure of the Styrian Home Union (Heimatbund) which issued circulars to its local sections. This was not a party organization (CF Affidavit von Hoodern No.67). These events concern the little town of Pettau, which was inhabited by Germans before the 1919 peace treaty.

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Document USSR-449, too, deals with recovery work in Carinthia and Krain, which formerly was inhabited by German settlers, and Document USSR-191 shows that these were measures taken by the SD in the border regions of Styria.

All documents show no basis for alleged knowledge of these measures, the carrying out of which remained unknown to the political leaders.

Charges against the political leaders concerning the administration in the East are dealt with at considerable length. Whether these charges are generally justified, cannot yet be judged on the basis of proceedings so far held. It can, however, be examined what knowledge the political leaders had of these events and in how far they were responsible for them.

Document 1058-PS contains Rosenberg's Speech before the Beginning of the War in the East. His defense counsel has commented upon it in detail. This speech was secret and known only to a small circle.

Document L-221 of July 16, 1941, concerns the Crimea. These are secret marginal remarks of Bormann concerning a discussion in the Fuehrer Headquarters.

A memorandum concerning a conversation between Rosenberg and Hitler on the Crimea is likewise unknown to the public (Document 1517-PS).

From Franks' Diary, Document 2233-PS, derive the charges against the political leaders on the food situation in the General Government.

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General knowledge of the fact that during the year 1941, 40% of the population suffered from malnutrition because of the political leaders' measures cannot be supposed. As far as food supply difficulties had been known, they might have been brought about by other causes especially after a lost war.

Document R-36 shows Bormann's frightful views on the treatment of the population in the Eastern territories. It is the position taken by Dr. Markull of the Ministry for the occupied territories in the East, dated August 19, 1942, addressed to Rosenberg. The open and severe terms, as well as the indignant opposition with which it was met, prove that Bormann's views were not accepted and that other measures were taken. The fact that this was put before Rosenberg proves that there was no doubt about this consent with the refusal.

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Other incidents became known to a larger number of people. Document 1130-PS contains the repeatedly quoted speech of Reichsleiter Koch held in Kiev on the 1st of April, 1943, on the subject of "Herrenvolk" (master race). The evidence shows that Koch himself knew that this opinion were not shared. He said that his chiefs of sections could be divided into two groups, the one working against him openly, the other secretly.

Document R-118 contains decrees of Himmler in his capacity

as Reichskommissar for the establishing of Germanism, dating from February and June 1942. They refer to the re-Germanization of former German Nationals in the Eastern territories which in itself is not inadmissible. One of these decrees is addressed to the Gauleiters for their information. It contains no mention of any criminal measures.

The prosecution concludes from document No.327-PS that the Gauleiters took part in the liquidation of enormous fortunes in the East. A closer examination shows that this is but the liquidation of German firms which had been set up as state enterprises at the cost of considerable subsidies. In a letter of the 17 October 1944 the Gauleiters are merely being requested not to interfere with the liquidations meanwhile taking place in German territory. All this goes to show that the political leaders as a whole could have no special knowledge of any incidents of a criminal nature.

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The activity of the Einsatzstab Rosenberg was no official Party matter. As the defense counsel of the defendant Rosenberg has already explained, his was an order of Hitler's giving personal instructions to Rosenberg and not to a Party agency. This is shown in document 136-PS, i.e. a letter of Hitler's of the 29 January 1940, and in the Fuehrererlass of the 1st March 1942, document 149-PS. This is confirmed by testimony given before the Commission

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by the witness Dr. Mueller on 1 July 1946, transcriptpage 1629 and by Graf von Roedern on 2 July 1946, transcrip page 2317. An affidavit of the witness Kuenzler No.58 A is to the same effect, stating that the offices of the Reich Treasurer knew that this order was intended for Rosenberg personally.

And indeed the Einsatzstab Rosenberg was not a Party organization. The members were scientists and specialists who had nothing to do with the Party, and who in many cases were foreigners. All had been recruited for the emergency service obligation (Notdienstverpflichtung).

The leader of the Einsatz in Paris was not a political leader. This special section was distinguishable even outside the Party by a special uniform. From the financing of the Einsatzstab Rosenberg through the Reich Treasurer of the Party, the prosecution concluded that political leaders were also concerned. Document 145-PS US Exhibit No.337, shows that it was only a loan, and that the Rosenberg Ministry as a State office had to bear the costs. This was corroborated by the witness Kuenzler, a leading official in the Party finance administration, in affidavit 58 A. The witness, Dr. Mueller, consultant for matters of private property testified to the same effect before the Commission, transcriptpage 1614.

To prove direct participation of the political leaders, the prosecution referred to document 071-PS, according to which the final settlement of the confiscations which had been carried out by the Einsatzstab Rosenberg should be made by the Gauleiters. The preface of this document, however, shows that it applies only to the confiscations within the German territory

of property belonging to people of an "ideological opposition." It is connected with document 072-PS which merely contains a proposition in connection with the church question. This proposition does not suggest that the Gauleiters confiscate things. It merely states they should look after them until their seizure by a more competent authority, in order to avoid anything getting lost.

These documents can not refer to plunderings abroad since no Gauleitungs existed there to which any such instructions could be given.

Finally I may point out that no orders had been given as to the ultimate destination of these cultural values. The witnesses Mueller, transcript page 1629, and Kuenzler, affidavit 58 A, stated before the Commission, that these objects should be dealt with in the peace negotiations. There remains the action concerning furniture (Moebelaktion) mentioned by the prosecution through which the furniture of 70,000 households in France was transferred. This was an action of the East Ministry, and was carried out by its own people, Document No.L 188.

In reference to prisoners of war other defense counsels have already made the juridical situation clear, and have shown that the political leaders were in no way concerned with these prisoners.

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The Prosecution have confronted the political leaders with document 656-PS, US exhibit 339. It is a directive of the OKW from the year 1944. It gives the guard details the right of self defense, in view of the request of the enemy propaganda to prisoners-of-war asking them to use force. In cases of extreme emergency, use of arms is permissible. The political leaders are in no way connected with the directive and its execution.

I have defined in detail my attitude with reference to foreign workers when dealing with them as defense counsel for Sauckel.

The witness Hupfauer has testified on 11 July 1946 before the Commission and on 31 July 1946 before the Tribunal regarding the actual facts. I further refer to affidavits 55a, to 55d, and to affidavit 55, which comprises 15,000 statements under oath. They give a reliable picture of general living and working conditions of these foreign laborers. Everything speaks against a systematic program of negligence and mistreatment or a general approval of the conditions as they were alleged.

It is necessary to define a special attitude with reference to document EC-63. This is a directive of the Peasants Union of Baden, of 6 March 1941 regarding treatment of Polish agricultural workers. It is an individual measure and it originates from a time prior to the unified settlement of labor allocation. It does not originate from a Party office, the Peasants Union being an independent professional organization

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outside the Party formation. The directive has been rescinded in view of the subsequent regulations for all foreign workers.

It has been firmly established on the basis of the evidence, however, that this directive in practice was not carried through with the approval of the political leaders. Here reference is made to the testimony of a number of political leaders from the Gau Baden which has been collected in affidavit P.L. number 68. I further refer to the testimony of the witness Hoerr (Peasants Union-Bavaria), who was heard before the Commission on 3 July 1946, page 2424 to 2433 of the German transcript; the testimony of Gauleiter Wahl for the Gau of Schwaben who was heard before the Commission on 15 July 1946 pages 2872 to 2874 of the German transcript, and to the testimony of the Ortsgruppenleiter Wegscheider for the Allgaeu who was heard before the Commission on 16 July 1946, and before the Tribunal on 31 July 1946, pages 2305 to 2306 of the transcript of the Commissio and pages 14300, 14532 and 14384 of the transcript of the Tribunal.

As far as interruption of pregnancy where foreign female worke were concerned, it is shown from the confidential information of th Party Chancellory of 9 December 1943 (Document P.L. No.98), that such interference has only been carried through at the express wish of the person concerned. The list annexed to the document also shows that an interference was the exception (compare with affidavi Hahler 56a).

The accusations of the lynching of fliers who made emergency landings is the last war crime which is particularly incriminating to political leaders.

We are not concerned here with whether the attacks of fliers against the civilian population were admissable, or whether the

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rage of the population was justified, but only with the fact that a killing of such fliers by the population was permitted without a previous judgment. It remains now to clarify whether such war crimes were generally tolerated and approved of by the political leaders.

The Prosecution has submitted 5 documents in this connection.

Firstly, directive of 13 March 1940 from the Deputy of the Fuehrer Hess, document 062-PS, US Exhibit 646. It concerns a secret directive regarding the behavior of the population towards crashed airplanes and towards parachutists, and, with reference to the latter it contains a directive that they are to be either arrested or "made harmless".

In order to understand these words which have become doubtful today, one has to firstly consider that we are here concerned with enemy soldiers who have been ordered to carry out a combat action. It is hardly possible for the civilian population to arrest them and we therefore have to understand the expression to mean that other methods for safety have to be taken in order to avoid damage.

For the purpose of the interpretation, it is essential to note that during the year of 1940, in view of the then prevailing air situation, one could only theoretically count on such happenings; it was a preventative measure which, according to the document itself, followed the branch directives. The passage in the document asking for special secrecy can be perhaps explained by the fact that the civilian population received a directive which could cause them to become combatants.

Actually no events originating from that time where a violation of international law was committed against flyers became known.

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Furthermore, the "Confidential Information of the Party Chancellory of 4 December 1942 (P.L. 94), speaks clearly against such a measure It firmly rejects any measures against flyers, as had been the practice in Japan.

The later documents, however, openly approving and inciting th war crimes have to be judged differently. It is further necessary t examine the documents and to determine how far the political leader had knowledge in general or were participants.

Himmler's order, dated August 10, 1943, Document R-110, US Exh 333, is addressed to the higher SS and Police Chief. According to this, the competent Gauleiter had to be informed, but competent wer only those who held official functions, that is, Reich Defense Commissars and Reichstatthalter, These functions had nothing to do with political activities.

The Party Chancellery would have been competent for such an incitement. Thus the conclusion is to be drawn that not all Gauleiters had been informed and in any case no Kreisleiter nor any subor inate party office. (Evidence of witness Hoffman during his testimo of July 2, 1946, Transcript page 2278-79, and 2403-04.)

The other Gauleiters,too,have confirmed that they were informe of Himmler's directives to the Police Officers only in their capacit as Reich Defense Commissars.

Bormann's circular of May 30, 1944 (Document Number 067-PS)

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was destined to inform all political leaders that they should tolerate the lynching of fliers. It was caused by Goebbels' newspaper articles of the preceding day, in which he addressed the population directly.

For the defense it is essential to discover in which way the political leaders cooperated, and whether these war crimes had be permitted everywhere with the consent and general approval of the political leaders.

This was certainly not the case. On the contrary, three of the Gauleiters concurred by testifying before the Commission that they realized the possible repercussions of the circular and that they did not forward it to the Kreisleiters contrary to the order given. (Witness Hoffman, page 2279, witness Kauffmann page 2764, witness Wahl, page 2675)

The same was testified by the Gauleiters of Mecklenburg, Weser-Ems, and Tyrol. (Affidavit 61 c, 61 h, and 61 g)

The fact that most of the Kreisleiters had no knowledge of the Bormann decree indicates that the same was done in other Gaus. Insofar as they received the decree, they did not translate it into practice and did not forward it because of its dangerous content. (Witness Meyer-Wendeborn, Kreis Oldenburg, Transcript pages 625-629; Witness Kuehl, Kreisleiter Ost-Hannover, page 2269-70); (Witness Biedermann, Gauleitung Thueringen, page 2224-2225; Witness Brueckmann, Kreisleiter Hessen-Nassau, affidavit P.L. 61b; witness Naumann, Kreisleiter Sachsen, P.L. 61 d, witness Eber, Gau Westmark, affidavit 61 f; Witness Haus, Kreisleiter Wetzlar, P.L.61c.

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The above mentioned witness, Hoffmann, belongs to those witnesses who confirmed that they did not forward the decree. An announceme concerning the admissibility of lynching was made on the 25 Febru 1945, that is, nine months later. (Document L-154, US Exhibit 325 It is remarkable for the political leaders that this witness has hesitated such a long time before acting according to the desires of Bormann and Hitler. During his testimony before the Commissio (page 2282, 2283) the witness has declared that he had withdrawn his draft and that the announcement was made without his knowing. In fact, in his Gau, the order has never been carried out. (Affi Karl Scholtis, Ortsgruppenleiter, P.L. 61a)

To the testimony of the Gauleiters and Kreisleiters it is t be remarked that only a few witnesses have been examined and tha only a few affidavits could be taken out of the mass of material available.

However, it is no doubt established that in general the political leaders did not follow the criminal suggestion. In spi of the embitterment, despair and misery at the destruction of ma human lives, violation of the rules of warfare was prevented.

Affidavit 61 includes approximately 11,000 individual statements; these statements not only bear witness to a passive rejection of dangerous methods but in many cases confirm positiv steps taken to protect the fliers against the excited population

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The Political Leader Corps has finally been accused by the Prosecution of having worked through the foreign organizations of the NSDAP, as a Fifth Column abroad. Evidence for this has neither been produced during the hearing of witnesses before this Tribunal on the occasion of the hearing of the case of Defendant Hess, nor during the hearing of evidence before the Commission. The Foreign organizations merely served in the drawing together the party members of German citizenship living abroad and it was meant to maintain in them the understanding for German Nationalism. It was expressly prohibited for members of the Foreign organizations to make propaganda for the National Socialist idea amongst the inhabitants of the host countries and to cooperate with political groups abroad even if those were representing National-Socialist or Fascist ide (Documents PL-57 - 58 and 59). For that reason, it was also forbi for them to collaborate with the American-German union; this prohibition was in fact strictly observed (Compare Examination of Witness von Roedern, German Record Page 2323).

On the strength of the erperiences made by Germans living abroad during the first World War, they were, as testified by Witness von Roedern on the occasion of his examination before the Commission, against policy of expansion. They had no other goal, but that of maintaining peace with every means and for that reaso it was out of the question that they were active in a Fifth Column. Members of the Foreign organizations were prohibited from any collaboration with the German Secret

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Service by order of their Chief Bohle. If individual members of the Foreign organization have infringed this order, then they did not do so on behalf of the Foreign organizations, but against its explicit instructions. This becomes apparent also from the fact tha the foreign states concerned (for instance England) have never prohibited the Foreign organizations in spite of such instances; to the contrary, the legal character of the Foreign organizations was repeatedly and expressly recognized by foreign states. Finally, the fact that the Foreign organizations have never exercised activities as a fifth column becomes apparent from the fact that they remained operative in foreign countries until the end, even at a time when n difficulties of a diplomatic nature could have arisen for these sta if they had prohibited the foreign organizations.

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I have commented on the individual points of the charges, the question now is what is the over-all picture that results? It is to be examined whether the cases investigated were individual occurances or whether they were held together by a mutual bond and thus indicate the criminal character of the political leaders.

The prosecution has pointed out that it has presented particular expensive evidence. One must admit on the basis of the occupation of all of Germany and the activity of the authorities, the last nook and cranny has been searched and the evidence has been brought here, but for that very reason the material surprises one on closer examination because of its scantiness; it is shown that it does not cover the field of the application of the prosecution.

Not partial evidence, but only systematic evidence can bring conviction that occurances which happened once at one place necessarily happened constantly in all other districts.

The individual occurances can be brought into a system only by "Conspiracy" which demonstrates the criminal character, but it is conspiracy which is to be proved by the incoherent facts.

The documents of the prosecution are contradicted by the testimony of the defense witnesses.

The prosecution has objected to the credibility of the witnesses

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that they are all witnesses on their own behalf.

They were reproached for having remained in office until the end.

If one were to follow this line of thought, the possibility of legal hearing of the members, guaranteed by the charter, would be void of meaning. The witnesses are not appearing on their own behalf, but as witnesses with a general knowledge of occurances and conditions which can only be cleared up through the members of the organizations themselves. Their credability must be shown by the uniformity of many testimonies.

One cannot in general reject the testimony, when the expressed purpose of the proceedings is to eliminate evidence on such points and later proceedings. There, every individual would be able to bring witnesses for the correctness of his testimony, but too late. If the testimony is to be untrustworthy, this must be proved in the individual case, such evidence cannot however, be given by having a witness draw conclusions which he cannot draw correctly because he lacks insight and knowledge.

Only a few witnesses were heard before the Commission and the Tribunal.

The testimony of individual witnesses has no compelling force to establish the criminal character of an organization. The witness can generally give little testimony about conditions as a whole, which are under examination even if he has an extensive knowledge of things, his testimony can be only fragmentary.

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Only a comprehensive inquiry can bring clarification. The prosecution had a good opportunity for this in the camps. That all internees were examined is shown by the individual trials which were carried out as a result of this examination, but crime as a general phenomenon could not be established.

The defense for its part gathered together all available witness materi through a sort of Enquete. In the proceedings before the Tribunal Enquetes were admitted in the form of Government reports. To prove general occurances they do not seem superflucs.

The weaknesses of the Enquete are well known; their main danger lies in the choice of witnesses. In the present case, however, the circle of witnesses is limited to camp inmates. The affidavits of approximately 38,000 persons which were submitted are not a selection from the camps, but a digest.

The secon difficulty of the Enquete is the impossibility for outsiders to check the statements, because of their extent. Under the prevailing circumstances, however, this checking is assured; the circumstances/ of all witnesses from the camps are known and confirmed throug investigations. The statements of the witnesses can be checked at any time. That such an examination is possible is shown by the establishment of de-Nazification Chambers.

If one denies the value as evidence of the testimony of witnesses, and the affidavits in a lump, without having examined the real value, this procedure cannot lead to any real result.

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If the testimony of witnesses are to be given the least evidential value, then the uniformed picture is destroyed on which the prosecution has based their plea.

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Another question which arises is whether through the responsibility on the part of all political leaders, based on their position or based on their knowledge and approval, a joint responsibility can arise.

The practical question is whether a Kreisleiter in the country is jointly affected through occurrences in another local group in the city and whether son one who had been a political leader in 1930 is affected by events which have occurred during the war. The question is whether a Blockleiter will suffer the effects caused by the circumstance that on the basis of secret instructions human beings were removed by Coup de Grace.

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It appears obvious that differences must be made.

First of all, the difference with regard to time.

The conspiracy, only inter-connected through individual actions, can according to the statement of the prosecutor of the Soviet Union not be proved with certainty before the year of 1933. According to Appendix A of the Indictment of the Organizations, the Reich Government is held responsible for a conspiracy only after 1934. Only one of the Documents used against the Politic Leaders refers to the year 1933 (PS-374.) It deals with a local anti-Jewish boycott.

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All other Documents concern events of after 1938. The majority of Documents only deals with war-time.

When ascertaining the incriminating period, no individual case can be decisive, but only events which at the time when they took place bore a general character.

If the Prosecution maintain their plea for the entire period of the existance of the party, then I believe that this position is unattainable.

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It is further more impossible to follow the train of thought according to which the honorary Blockleiter is supposed to be equally responsibl as a Reichsleiter or Gauleiter. Difference must be made according to the position held.

A Gauleiter has different possibilities for gaining an insight and his knowledge and experience is greater that that of a local group leader. The political leader, who is a professional, must be judged differently that one who is acting in a honorary capacity.

Only if proof of a joint conspiracy is furnished could they be put on the same level. But the conspiracy in particular is yet to be established.

When examining the incriminating documents, the difference of this responsibility becomes evedent. There are instructions given at the Higher level of which merely the smallest circle had gained knowledge; their are instructions meant only to be communicated generally to political leaders, which, however, did not pass through the entire channel of orders. There are instructions which

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issued in a certain part of the Reich independ ntly did not become known in other Gaus. There are measures carried out by the Highest political leaders which only became known to them because of special state positions and which therefore no contact with the apparatus of the party.

The difference in position has in fact been recognized by the prosecution during their case against the political leaders and accordingly, the members of the local group staffs and the au iliaries of the Zell and Blockleiters have been ommited from the proceedings. It is in accordance with this principle that over and above this the degree of responsibility on the part of the remaining groups must be examined.

The position by which the Zell and Blockleiters are still included in the proceedings, whereas members of the staffs of the local groups, who held a similar or even higher rank, are not included, is due to the fact that in the manual of organization they have been described as "Hoheitstraeger".

The significance of the manual of organizations is misunderstood by the prosecution. The book was a theoretical work and has been described a such by the officials of the Reich organization leader, Ley.

The designation "Hoheitstraeger" was given to Zell and Blockleiters for merely constructive reasons, because in that way they could be included in the territorial organization. This construction led to it that a Block leader appears as an important Hoheitstraeger, whereas a Reich leader lacks this same characteristic; on the other hand, the Block leite falls, as a Hoheitstraeger,

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into the same category in the Reich as the Fuehrer (See Affidavit Hedrich, P.L. No. 27, Deputy Chairman of the Investigating Commission for N.S. Literature; Affidavit P.L. No. 25 Schmidt, head of the Chief Department of the Reich organization Chief, Affidavit P.L. - No. 26 Forstsch, Gau-Organization chief Munich-Upper Bavaria.)

Accordingly, in the book of Chief Section Leader Dr. Lingg, entitled "Administration of the NSDAP" which appeared in 1940, Zell and Block leiters are not listed as Hoheitstraegers. The designation, Hoheitstraeger only goes down as far as the level of local group leader (Ortsgruppen-leiter) (Document P.L. No. 1).

In the same manner a decree of the party chancellery, dated the 8th of October, 1937, does not include the Zell and Blockleiters among the Hohhitstraegers (Document P.L. No. 2). There, only four Hoheits territories are mentioned and they end with the local group, Ortsgruppenleiter.

This follows an announcement from Hitler dated 25 April , 1941 (Document P.L. No. 4,) regarding authority to enter damaged property after an air raid. There once again Zell and Blockleiters are not included amongst the Hoheitstraeger.

Equally, the periodical "Der Hoheitstraeger", submitted by the prosecution as Document 2660-PS, for the purpose of proving the special character of the Zell and Blockleiter shows that the periodical was only dispatched to ranks up to and including local group leaders. (See Document P.L. No. 25.)

In addition, a further instruction of the party chancellory was issued on 7 December, 1943, in which Block and Zell leaders are not counted amongst Hoheitstraegers. (Document P.L. No. 24.)

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But not only from the point of view of form, also from the point of view of their activity, the Zell and Block leaders were not persons to whom sceptica privileges and authority was granted; their activities have been described by witnesses examined before this Tribunal; it consisted in practical assistance. These political leaders were acting for the administration of the party, or during war time to an ever-increasing degree carrying out social work in order to deviate the distress after air-attacks to which was added practical assitance in resettlement and the prevention of damage during air raid alerts. It was a self sacrificing and strenuous work which was demanded from these persons.

These political leaders did not occupy a predominant position. Interesting in this connection is Document P.L. No. 9, the Appendix to the announcement from the Deputy of the Fuehrer, dated 12 July 1940. It appears from this that contrary to the actual Hoheitstraeger, the politic l reliability of Zell and Block leaders had still to be established, if they desired to apply for a marriage loan or any other fype of financial assistance.

That such people could not be regarded as generally suitable for the duties of a spy is a certainty.

It also becomes clear that they had no tasks of political leadership; they were mostly ordinary people who lacked the time and the knowledge for such work. The fact that from certain more highly educated circles, individual persons were appointed as Blockleiters also shows that it was not their political ability which was to be used in this connection.

Particularly important in this connection is the Document P.L. No. 24, just mentioned, regarding "Hints for Leadership of the Party Chancellery". These "Hints for Leadership" are issued as is stated in the document "for the speedy political

information of the Hoheitstraegers (also the Gau-Kreis and local group leaders) and for the support of leadership work." In order to inform the junior leaders of the party and affiliated organizations, the Hoheitstraegers are in each case and in their territory, (Gau, Kreis, local group) to inform the corresponding organizations and units of these leadership hints.

Block and Zell leaders, therefore, were neither the regular recipients of such leadership hints, nor were local group leaders (Ortsgruppenleiter) allowed to inform them of these. This proves that Zell and Block leaders were excepted from the political instructions which was meant to be achieved by these leadership hints and that they had no/or very small tasks of the nature of leadership and that it was not considered essential to support them by means of these leadership hints.

The fact, also that particularly during war-time, Zellen and Block leaders were simply appointed to their positions speaks against the political significance of their positions.

The attempt, repeatedly made during the war to refuse acceptance of such an office, also shows considerable pressure on the part of the party to accept such a position. It has become clear on the other hand that if a refusal did not take place because the tasks which had to be fulfilled were considered criminal. It was the additional effort and the work involved in addition to the considerable professional activities in war-time, which were the cause for such refusals.

It is an error on the part of the prosecution brought about by the Organization Book, to assume that a Zell or Block leader

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had had the power to issue orders, or institute disciplinary actions, or that he had had powers similar to those of the police. (See Official Party Information Document P.L. No. 29). It is furthermore not correct that he had the right to call upon the SA, SS or the Hitler Youth for their support. The evidentce taken before the Commssion has established this fact. I draw your attention to the examination of Witness Hirt on 14 April, 1946, page 922 of the Recork; the Witness Engelbert on 17 June, 1946, page 992 of the Record; the Witness Schenieder on 19 June, 1946 page 1213 of the Record; and the Witness Kuehn on 10 July, 1946 page 2514 of the Record. Additional affidavits confirm this fact. This corresponds to the official party instructions (Documents P.L. No. 26 and P.L. No. 27).

The Zell and Block leader could have no knowledge of the events on the strength of his actual position, events, which according to the indictment are criminal; furthermore, a general activity in that direction can not be proved.

The knowledge on the part of an ordinary political leader was no greater that that of any party member (Document P.L. 47).

His duty to support the party and the state was no greater than that of any civil servant (Document P.L. No. 37). That there have been individual actions by political leaders, which are strongly incriminating, is something which everyone knows who has lived in Germany, but it is equally well known that this would not represent an action typical for the majority of all Block leaders.

From the point of view of time, too, this group requires special examination.

Until the first of December, 1937, every party member was under an obligation to the Party to comply with a request for the taking over of an office in the Party (Dcoument P.L. No. 8 - Page 78;

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Document P.L. No. 64, Document P.L. No. 60, Document P.L. No. 63, Page 77.)

Upon the introduction of the law for the Safeguarding of the Unity of the Party and State on 1 December, 1933 (1395 P.S.) this duty, until then of the nature of a private contract, the duty to cooperate, became a legal obligation toward the state, (Paragraph 3 Sub-paragraph 1 of the law, Document P.L. No. 63.) In paragraph 5 of this law, the detention and arrest are threatened in the event of violation of this duty and furthermore penalties which according to German law could only be imposed in the event of violations of legal regulations.

By means of Paragraph 1, Sub-paragraph 3, of the decree for the carrying out of the law on safeguarding of the Unity of the Party and the State, the statute of the N.S.D.A.P., was given a public-legal character. In that manner, also paragraph 4, sub-paragraph 2-B of the statute, was given public legal character, which paragraph had previously formed the basis for the obligation civil law
based on /regarding the taking over of a function in the party.

The fact that the coming into force of the law, dated 1 December 1933, for the taking over of an office in the party was a lawful duty, becomes apparent argumentum e contrario, also from a specific statement contained in Paragraph 20 of the Reich Labor Law dated 26 June, 1935 (1389 P.S.) according to which members of the Reich Labor Service are entitled to refuse the acceptance of an honorary function in the services of the party. Special legislation would not have been necessary regarding the exception of RAD members from the duty of taking over a function in the party, if the duty of cooperating in the party had not been a lawful one.

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In its practical effects, the duty to cooperate was equal to coercion.

Anyone refusing to obey the instructions for the taking over of the functions would, without doubt, have been ejected from the party by a party tribunal. (Document P.L. 63 and P.L. 64, P.L. 8) Exclusion from the party would have been equal to the loss of an existence with all its consequences. (P.L. 65) Apart from this, a party member who refused to accept such a function had to be prepared to be penalized with the loss of his liberty (Document P.L. 63-Page 75). The coercion therefore to accept a function in the party was simultaneously physical coercion.

Anyone working in the Party before the seizure of power was probably doing so for idealistic reasons. Anyone who was given a function after the seizure of power, probably accepted it in most places without enthusiasm, particularly since he, as shown by the evidence, was only taking upon himself burdens and unpleasantness, without having any advantages in the process. Without doubt, however, all those who became party officials, after the beginning of the war, accepted a party function only on the basis of the existing legal regulations. Those men not called up into the armed forces were rather physically unfit, or professionally over-burdened that they neither had the time nor the inclination to take over a function in the party. This explains the fact that instructions from the Fuehrer and the Party Chancellery in which the service elements of the party were instructed to call upon party members for their cooperation became more and more vigorous and even contained the request

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to proceed against anyone refusing to collaborate in the party by employing the legal system of the party. (Document PC No. 61 and PC No. 62) During the war the legal and physical coercion regarding cooperation in the party not only existed on paper; in fact this possibility was being made use of to the largest possible degree (Document PC No. 8).

The assumption is justified, therefore, that if anyone became a functionary and political leader during the war, this was regularly the outcome of the legal instructions and the result of the threat of being prosecuted by the legal system of the party. This applies in practice to all the Block and Zell leaders and members of the local group staffs appointed during the war.

The prosecution has asserted, on the other hand, that this coercion regarding collaboration in the party was merely the result of a voluntary entry into the party. This would lead to it that membership in the party would already be punished, on the other hand, one cannot argue it has been done by saying that the party members concerned could have avoided the coercion for collaboration in the party; they ought to have accepted a position in one of the affiliated organizations (for instance the NSV) in good time. The incorrectness of this conception becomes apparent when one realizes that in this way collaboration in the party is being recommended, though in this case elsewhere.

In the case of civil servants and as a further instance of coercion, one must add/that the pressure exercised by the superior departments and interests (compare any of the/following examples in Document PC 67, 68, 69 and 70).

These decrees were the means by which civil servants could be forced to collaborate in the party. If a civil servant refused to comply with this request, then he would

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have to expect the worst possible consequences; he had to fear that disciplinary action would be started against him by his superior department which would lead to the loss of his livelihood and which could lead to starvation for his entire family.

If on the other hand, he wanted to escape this danger by first of all leaving the party, he would likewise suffer the loss of his livelihood (See Document PC No. 7). Civil servants found themselves in a particularly difficult situation therefore.

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In view of these circumstances, we cannot consider these officials as a freely constituted group of people.

The tasks of the Zellenleiters and Blockleiters and, therefore, also the importance of their position varied according to the periods.

Those who were Zellenleiters and Blockleiters before the seizure of power in 1933, must have been politically more active than those who accepted these positions at a time when only practical tasks could be fulfilled. During the war persons who by reason of their age or their occupation had not been drafted were employed in these offices as auxiliary aides. It is obvious that these persons were not elite troops of the party, destined to spread fear and dread, and who played at being little Caesars.

If in addition, you consider the difference of situation between town and country, you cannot conclude that these 1,200,000 persons included in this group were criminal.

The prosecution has excluded the members of the Ortsgruppenstaff from the proceedings. Their point of view is presumably that these members in their capacity as honorary helpers of the Ortsgruppe hold a position of little importance.

It would be well to examine whether

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The Members of the Kreisstabs and Gaustabs can be excluded on the same grounds.

Their connection with the influential Hoheitstraeger puts them under a more serious suspicion. The nature of this connection must be examined more closely.

The leading political offices of the staffs were the staff office (Stabsamt) the propaganda office (Propagandaamt), the training office (Schulungsamt), the organization office (Organisationsamt) and the personnel office (Personalamt). Their personnel consisted mainly of officially paid persons.

The treasurer (Kassenleiter) was another member of the staff. He was not responsible, however, to the Hoheitstraeger but to the Reichs Secretary of the Treasury (See Document P.L. Nr. 75).

The Party administration of finance had created an independent control and an accounting system which was a purely bureaucratic institution and of an entirely unpolitical nature. It comprised about 70,000 political leaders.

Besides the political offices, there were still consultant political leaders There were four categories: One representative of the different sections of NS-Frauenschaft (NS Womens'Association), NS-Dozentenbund (NS Professorial Assn.) and NS-Studentenbund (NS Student Assn.)

A representation of the Welfare Associations, NSV and NSKOV, the leaders of the professional organizations for teachers, officials, technicians, physicians and members of the legal profession.

The representatives of the technical offices: DAF, industry and commerce, agrarian policy, etc.

In order to gain a correct impression of the dimensions of these offices, it must be pointed out that they

generally had no staff of their own and very often no office rooms. Sometimes they were not even in the same building as the staff but some distance away.

There was little practical cooperation with the Gauleitung and Kreisleitung. A number of affidavits corroborate that these agencies were hardly ever visited by the Hoheitstraeger (Affidavit P.L. 39) and that they were not requested to work with them. (Affidavit P.L. 48-50) During the war, some of these agencies were dissolved because they had become unnecessary, such as the Rechtsamt in 1942 (Affidavit P.L. 44) and the Office for Officials in 1943 (Affidavit P.L.40).

The task of these offices was mainly technical, and their officials therefore received instructions not from the Hoheitstraeger, but from the competnent superior agencies. (Document P.L. 72)

No direct accusations have been made by the Prosecution against the activity of these staff members.

Physicians have been incriminated in connection with the mercy killing and the concentration camp atrocities. But these are not physicians of the Public Health Office. Agreements between the Reich Minister of Justice and Himmler and Goebbels upon a special criminal law and extermination through labor have been mentioned. The Kreis offices and Gau offices for justice are in no way connected with this.

These offices certainly represented the National-Socialist ideology within the staffs, for this was their task; but here it is

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the political leaders were concerned, outside the official activity, in a conspiracy with aim to a war of aggression or the committing of war crimes.

One cannot declare them to be criminal on the grounds of a general supposition that they might have had some knowledge of these facts. It is most important to verify the exactitude of this supposition now, and it must not be postponed until a later trial.

The verdict of the Tribunal will count for two-thirds in the condemnation of these men. It is to be feared that during the subsequent trials, the individual guilt may be too easily presupposed upon the assumption of their general guilt.

In the judging of the typical offices, it must not be forgotten that about 140,000 persons are concerned who were employed in an honorary capacity.

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We still have to examine the group of the real Hoheitstraeger, the functionaries, who made up the nucleus of the Party. Their special position and their political authority distinguished them, and set them apart from the other political leaders, but their position was varied.

Whereas the Ortsgruppenleiter is restricted in his sovereignty rights to the circle of the Party membership in his Ortsgruppe, the authority of the "Higher Party leaders" (Hoeheren Parteifuehrer) goes beyond Party limits concerning themselves with the rights of those who do not belong to the Party.

Only the Kreis and Gauleiter have the right for exercising political judgment toward outsiders, and in that way determine the fate of those outsiders. At the same time and in this way they are exerting great influence on the life of all.

The decision which they will make is one of their own judgment. This fact is the sign of carrying full responsibility themselves. The Ortsgruppenleiter will only be asked to furnish proof for the judgment. He is only an executive organ, and devoid of any independence.

Externally the difference is shown by the fact that the Ortsgruppenleiter is prevented from concerning himself in a comprehensive manner with all that is happening. It was especially the case during the war when need directed all thoughts and powers towards your own problems.

The 17,000 Ortsgruppenleiters were members of the lower middle class who had not previously been politically active, and who lacked experience in this dangerous matter.

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Most of the Ortsgruppens were in the country where country work proceeded alongside the activity which had been brought in. The testimony given by witness Wegscheider before this Tribunal gave a true picture of the situation.

The position of the Ortsgruppenleiter becomes particularly clear when we compare his responsibility with that of the higher Party leader who was appointed by Hitler directly.

Because of his connection with the highest leadership, the probability of a greater knowledge is greater with the higher Party leader.

This trial has shown that the separation of the "ressorts" and the artificial tearing apart of administration and police has played an important role. But because of the merging of many functions, and because many strings were gathered in one hand at least the highest Party leaders could see when everything was not as it should be on critical points.

The question is whether a Gau or Kreisleiter could set his mind at rest, because everything was as it should be in his sector, and that the suspicious incident was taking place outside his domain, or his "ressort."

We have to answer this question in the negative. He had to supply himself with the knowledge, taking his own sovereign rights into account, for he was the one who had deprived another of any possibility whatsoever of concerning himself with these things. He had the right, and therewith also the obligation to be active because of his office.

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He had become the sole public figure, and therefore had concerned himself with public matters.

Actually, those Gau and Kreisleiters who were examined here did concern themselves with events as they occurred. They investigated the transporting of the Jews. They endeavoured to get into concentration camps, and investigate the conditions of foreign workers. They voiced their misgivings, and they protested.

Were they doing their duty that way? In this connection we had to examine the question of the sharing of responsibility. It is not possible that all concerned themselves with everything. At the lowest levels there are practical concerns of a local nature, and they could not be concerned with the problems found at the top level. Not every shock can be transmitted to the entire machine.

The Kreisleiter who passes on reports upon separate incidents to the Gauleiter, particularly in a dictatorial state, must be credited with this separation, but he must concern himself with the result of his reports, and draw his own conclusions.

This is more so the case with the Gauleiter in view of his superior position. There exists a limit where the daily routine is no longer concerned, and moral principles are being touched upon. When one was in Himmler's sphere of influence, did one really have to drive on regardless of that which would happen? An answer to this question has been attempted several times.

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Must one really demand an action immediately and without compromise. Is it really "All or nothing"? Can one afford to let things take their course, or is it "Now or never"? Must one define guilt and merit, and can one hope for reformation? Is it sufficient to remain at one's post when one disapproves, or hopes to prevent worse by remaining, or does one become guilty too, by remaining, and keeping up appearances? Has he who (Immer strebend sich bemueht) any justification? Must he take up the struggle against adverse circumstances, even if his own life seems needlessly jeopardized, or should he submit to it, and bow to fate?

"To be or not to be, that is the question."

An answer cannot be found without minute examination of the legal basis of the guilt; The knowledge and sanction and criminal negligence.

If the criminal nature of this group is to be established, these questions must first be decided upon.

Such an examination can be carried out for individual cases. It is practically possible in the case of a group of two thousand Kreisleiters and Gauleiters. These persons are known, their actions took place in public, and are not difficult to clear up.

There remains the group of Reichsleiter. The same views are applicable to them as to the Gauleiters.

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Himmler, who only had the rank of Reichsleiter, cannot be counted with this group. Document PL-59A. That position, however, is of great legal importance to all political leaders. They include the principal defendants. According to Article IX of the Statute, the conviction of the group can only be pronounced in connection with the actions of the principal defendants.

The trial brief only mentions Rosenberg and Bormann. Only annex B of the supplement to the trial brief added four more Reichsleiters, thus including the Gauleiters Sauckel and Streicher.

Frick, too, held only the rank of Reichsleiter, which is in contradiction with the direct inclusion of his actions.

Where the other principal defendants are concerned, one must examine whether they committed the acts with which they have been incriminated in their capacity as political leaders, or in another capacity.

The prosecution has recognized the legal significance of this distinction by referring in the summary of the trial brief only to those deeds of Rosenberg and Bormann with which they are charged in their capacity as political leaders (Trial brief, page 75).

One must not depart from this distinction. The ruling of Article IX of the Statute is not a purely formal rule of procedure for the trial. It is a pertinent limitation of the criminal groups,

The group is not to be formed arbitrarily and lawlessly by the prosecution, but there must be some connection between it and the act of one of the principal defendants. This is only possible if one of the principal defendants acted within the corps of political leaders. The connection does not exist where the effect of the action of one of the principal defendants does not effect all levels of the political leaders; this is to be considered in passing judgment on the lower grades.

The connection is lacking in the case of the principal defendants, whose connection with the political leaders was established only later with the exception of Hess.

In the case of Rosenberg, the actions with which he is charged were essentially in the state sector, where he was active as Reichs Minister for the occupied eastern territories.

The actions of Bormann as chief of the party chancellory from 1941 on are decisive for the judgment of political leaders. As a result of the absence of this principal defendant, however, it is precarious to base the condemnation of the group on his acts since there was no close investigation of the occurrences. For the most important charges, it would have to be cleared up whether Bormann acted as chief oftthe party chancellory or as secretary of the Fuehrer outside of the party machine, or whether he acted independently contrary to all instructions (Judgment 53).

It is noteworthy that Hess, Bormann's superior, is not included in the original trial brief, although until 1941 he was deputy of the Fuehrer and the Party.

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Dr. Servatius

Presumably the prosecution was at that time of the opinion that he could not be charged with any action in connection with the Corps of Political Leaders which would indicate a criminal character. This is a significant point of view for the judgment of the group as far as time is concerned.

The actions of Gauleiters Sauckel and Streicher cannot be taken as standard for the Political Leaders as a whole. As Gauleiters they can only act in their district. The actions with which they are charged in this trial they undertook outside of their function as Political Leaders--as plenipotentiary general for labor commitment or as a newspaper publisher.

* *

I want to present two legal viewpoints which can be of significance for the judgment. One idea is the retroactiveness of the verdict. I do not want to attack it as legally inadmissable since the Charter has ordered it, but since the verdict is at the discretion of the Tribunal, fairness can be observed here.

Retroactiveness in an individual trial can be justified by the fact that the perpetrator was warned and had to realize. It is different with the great number of little Political Leaders who are made responsible for a conspiracy only indirectly through their leaders.

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Dr. Servatius

The second point of view is the lack of legal hearing.

In these proceedings before the Tribunal the preliminary decision is reached which is decisive for every member of the organization. Therefore, everyone was given the right to request a legal hearing. Only comparatively few have made use of this right.

One must assume that many have no knowledge of their right, or have no opportunity to submit their applications to the Court.

There are applications from only about one-third of the camps of the English and American zones; from the French Zone only two camps, but particular reference should be made to some areas from which no applications at all have been received:

There are no applications from Austria, and the camps there could not be visited. The permission from the Military Authorities was given, but the approval of the Control Counsel was not received. This is noteworthy since there are special circumstances in this case which might possibly exonerate the members; special treatment and judgment, especially in regard to time is advisable.

Nor are there any applications from the Soviet Zone, although the official announcement is said to have been made. I myself only recently had an opportunity to visit two camps. Those interned there declared that they knew nothing of their right to a hearing;

not all wanted to submit applications.

For these districts, therefore, the defense was in a rather critical state as regards evidence. For these zones a few Political Leaders were heard who could be reached in British or American camps. Although one obtains a certain picture in this way, the taking of evidence before the Commission has shown that there may be testimony of significance for the defense.

Thus, a Kreisleiter of the West was able to testify that the construction of the West wall had convinced people there of Hitler's defensive intentions. A Kreisleiter of the North referred to the Fleet Treaty with England, which the coastal population considered a sign of the will for peace. Other witnesses have brought forward noteworthy reasons for the church membership of the Political Leaders in their district.

The real significance of the limitation could be judged only after a hearing, so that a judgment on this subject is not yet admissable.

* * *

The question is also, however, of considerable significance for the trial: The Charter has guaranteed the opportunity of a hearing. Every provision of form has its deeper sense and its basic significance. Here legal hearing is held up as a democratic principle in contrast to rejected police methods. This principle was put forth jointly by the signatory powers and the Tribunal must see to it that it is observed. This is an unrenounceable rejection which I hereby expressly assert.

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The divergent practice in theinterpretation of Article 9 of the Statute must be noted from another point of view also. There is a danger of divergent interpretation of rulings of the Tribunal against the organizations.

In addition to a general definition of the organization as a whole, it is essential also that the degree of guilt or innocence of any one group or individual therein be adjudicated separately, in the interests of any subsequent proceeding.

The degree of a punishment is uncertain.

The scope of the penalties fixed in Law No. 10 ofthe Control Council--which ranges up to the death penalty--offers no legal protection if their interpretation is left to the free decision of national tribunals which may subsequently sit in judgment. The judgment of the Tribunal might engender new mischief.

The Tribunal must see to it that the goal which it seeks to attain will be attained. The punishment must not become a revenge. The measure of punishment must not be based on the theory that millions of victims necessarily implies the guilt of millions which should be brought to punishment.

If the basic aim of the judgment is to deter, the following must be borne in mind:

None who appeared before this Tribunal has attempted to justify the crimes which are the fundament of this trial.

All who appeared here divorced themselves from these crimes.

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Dr. Servatius

Only if this had been the case would this be a trial involving an ideology which should be eliminated.

That is why there is no typical prisoner for this ideology, who would have said, "I have millions behind me", or, "I cannot do otherwise, God help me!" The millions were set in motion by another goal for which they fought. This goal was not the world of crime, but the shining radiance of socialism. The masses saw the miracle of the rise to power succeed a period of misery and were strengthened in their belief. They are ready to believe once more.

The foundation to this belief is the justice of the verdict against the organizations by which the entire population will be affected.

This verdict shall inaugurate the era of a new international law and punish those who are responsible for the war. It is only just that the old jurisdiction should disappear from the stage of world history, which punished the entire people by imposing territorial annexations and economic contributions in the peace treaties without regard to guilt.

Today it is threatened by the two-fold and three-fold punishment by the peace treaty, by Law No. 10 of the Control Council and by the law for de-Nazification.

We are still in a state of war and this trial has been called the continuation of the war efforts.

But there must be peace and "Should war not end with war, whence then shall come the peace?"

Closing Speech - Political Corps Leaders

English

Dr. Serratios

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